

Remarks

Claims 1-16 are pending in the subject application. Applicants acknowledge that claim 15 and 16 have been withdrawn from further consideration as being drawn to a non-elected invention. By this Amendment, Applicants have amended claim 1, and canceled claims 2-6 and 11. Support for the amendments can be found throughout the subject specification and in the claims as originally filed. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 1, 7-10, and 12-16 are currently before the Examiner. Favorable consideration of the pending claims is respectfully requested.

As noted above, Applicants acknowledge that method claims 15 and 16 have been withdrawn from further consideration as being drawn to a non-elected invention. However, Applicants respectfully request that the withdrawn claims be rejoined in the subject application upon an indication of an allowable composition of matter claim from the elected invention in accordance with MPEP §821.04.

Claims 1-7 and 10 are rejected under 35 USC §101 on the grounds the claimed invention is not supported by a well-established utility. The Examiner asserts that claims 1-7 and 10 are directed to microorganisms which have the same characteristics and utility as microorganisms found naturally and, therefore, do not constitute patentable subject matter. Claim 1 (and thus claims dependent therefrom) has been amended to recite “An isolated *Salmonella* microorganism . . .” in accordance with the Examiner’s helpful suggestion. The isolated microorganism can be used to treat or prevent infection by *Salmonella* and other pathogenic microorganisms. Accordingly, reconsideration and withdrawal of the rejection under 35 USC §101 is respectfully requested.

Claims 1-5 and 7-14 are rejected under 35 USC §112, first paragraph, as lacking sufficient written description. The Examiner asserts that the subject specification does not indicate distinguishing attributes shared by members of the genus of attenuating mutations which disrupt the expression of a gene located within the Spi2 pathogenicity island and auxotrophic mutations. The Examiner further asserts that the genus is “highly variant.” Applicants respectfully assert that there is sufficient written description for the claimed invention in the subject specification to satisfy the requirements of 35 USC §112, first paragraph. However, in a sincere effort to expedite prosecution of the subject application to allowance, Applicants have amended claim 1 to recite that the

microorganism comprises a mutation that disrupts expression of an *ssaJ* gene and a mutation that disrupts expression of an *aroC* gene. Support for this amendment can be found throughout the subject specification including, for example, at page 3, line 28, and at page 4, line 8. Accordingly, reconsideration and withdrawal of the rejection under 35 USC §112, first paragraph, is respectfully requested.

Claim 11 is rejected under 35 USC §112, first paragraph, as nonenabled by the subject specification. The Examiner asserts that it is not clear that host cells possessing the identical properties of ZH9 and WT05 are known and publicly available or can be reproducibly isolated from nature without undue experimentation. Applicants respectfully assert that the claim is enabled by the subject specification. However, by this Amendment, Applicants have canceled claim 11 in order to expedite prosecution of the application to completion, thereby rendering this rejection moot. Reconsideration withdrawal of the rejection under 35 USC §112, first paragraph, is respectfully requested.

Claims 1-14 are rejected for "obviousness type" double patenting over claims 1-11 of U.S. Patent No. 6,756,042. Applicants respectfully assert that the claims are not obvious over the cited patent. However, in order to expedite prosecution of the subject application, Applicants have submitted a Terminal Disclaimer with this Amendment which obviates this rejection. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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DRP/kmm

Attachments: Petition and Fee for Extension of Time Under 37 CFR§1.136(a);
Terminal Disclaimer